

Appendix D: Scoping Comments



United States Department of the Interior



MINERALS MANAGEMENT SERVICE
Alaska Outer Continental Shelf Region
3801 Centerpoint Drive, Suite 500
Anchorage, Alaska 99503-5823

AUG - 4 2005

John R. King
Coastal Program Division
Office of Ocean and Coastal Resource Management
National Ocean Service, SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. King:

The Minerals Management Service (MMS), Alaska Outer Continental Shelf (OCS) Region, appreciates the opportunity to submit comments in response to the National Ocean Service (NOS), National Oceanic and Atmospheric Administration's (NOAA's) Notice of Intent to Prepare an Environmental Impact Statement (EIS) on the State of Alaska's (State) amendments to its coastal management program. NOAA requested comments on alternatives and potential impacts of the State's proposed amendments.

The MMS believes that the proposed amendments would provide substantial improvement to the State coastal management program, reduce duplication with other existing regulatory authorities, and provide for greater certainty in project reviews. The MMS has no recommendations for additional alternatives. The proposed amendments should provide a strong coastal management program that would likely prevent significant impacts to the environment as defined under the National Environmental Policy Act (NEPA) and properly manage the uses and resources of the coastal zone as required by the Coastal Zone Management Act and State legislation under Chapter 24, SLA 2003.

The MMS notes that the following documents may be useful to NOAA in preparing the EIS. These documents include current information on the offshore and coastal environment, updated analysis on the potential effects on the environment and the coastal zone from oil and gas activities on the OCS, and OCS lease terms and mitigation of potential effects, particularly on subsistence hunting activities.

- Final Multiple-Sale EIS for Beaufort Sea Planning Area Oil and Gas Lease Sales 186, 195, and 202 (OCS EIS/EA MMS 2003-001)
- Environmental Assessment for Proposed Oil and Gas Lease Sale 195, Beaufort Sea Planning Area (OCS EIS/EA MMS 2004-028)
- National Marine Fisheries Service Arctic Region Biological Opinion dated May 25, 2001



The MMS encourages NOAA to use these references in preparing the NEPA document on the State's proposed program amendments.

In listening to and reviewing the public testimony offered to date on the State's amended program, it is clear that local districts have the perception that they are losing their voice regarding subsistence and development issues, especially on the OCS. For this reason, MMS believes it would be helpful to describe how MMS addresses subsistence issues and seeks local involvement before proceeding with an oil and gas lease sale or approving a permit or plan for exploration, development or production activities on the OCS.

Under Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA) (16 USC 3120), Federal agencies in Alaska must evaluate the effects on subsistence uses and needs before leasing or otherwise permitting the use, occupancy or disposition of public lands. If the activity would significantly restrict subsistence uses, the federal agency must provide notice, hold public hearings, and take reasonable steps to minimize adverse impacts. While the OCS does not fall under the purview of ANILCA, MMS is guided by this process and analyzes potential impacts to subsistence activities for its NEPA documentation prior to a lease sale or approval of an OCS permit or plan.

In addition, Environmental Justice, as defined in Executive Order 12898, calls for an analysis of the effects of federal actions on minority populations with regard to subsistence. Specifically, Environmental Justice is:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

Section 4-4 of Executive Order 12898, regarding the Subsistence Consumption of Fish and Wildlife, requires federal agencies to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence, and to communicate to the public any risks associated with proposed activities on the consumption patterns.

Among the various requirements imposed by MMS to minimize the adverse impacts to subsistence uses and resources from oil and gas development on the Alaska OCS is lease Stipulation No. 5, our conflict avoidance mechanism to protect subsistence whaling and other subsistence activities. This stipulation helps reduce potential conflicts between subsistence hunters and potential oil and gas activities including reducing noise and disturbance conflicts from oil and gas operations during specific periods, such as the annual spring and fall whale hunts. It requires that the lessees meet with local communities and subsistence groups to resolve potential conflicts. The consultations required by this stipulation ensure that lessees, including contractors, consult and coordinate both the timing and siting of events with subsistence activities. The full text of the Stipulation No. 5 is enclosed.

Before proceeding with an oil and gas lease sale or approving an OCS plan, MMS will consult with federally recognized tribes consistent with the Presidential Executive Memorandum dated April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments; Executive Order 13175 dated November 6, 2000, on Consultation and Coordination with Indian Tribal Governments; and the January 18, 2001 Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes. In addition to government-to-government meeting, multiple opportunities for public input are provided as part of the NEPA process and the consistency review process under the federal Coastal Zone Management (CZM) program.

There are a number of other legally mandated assessments of the potential impacts of OCS activities on subsistence uses and resources. Among these are the consultation process under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). The MMS routinely coordinates with the U.S. Fish and Wildlife Service and NOAA Fisheries Service to ensure that offshore activities and operations comply with the ESA and MMPA and to identify mitigation and monitoring requirements for OCS activities such as seismic surveys or the construction of offshore development facilities.

To the extent that a subsistence use area is designated by either the State or District under Alaska's amended program, a federal action or authorization would need to avoid or minimize adverse impacts to subsistence uses of coastal resources and an analysis or evaluation of reasonably foreseeable adverse impacts would need to be provided with the federal consistency determination or certification (11 AAC 112.270). Accordingly, this important tool for managing federal actions or authorizations affecting coastal uses and resources would be preserved under Alaska's amended program, and would continue to guide sensible oil and gas development in the Alaska OCS.

The MMS requests that NOAA clarify its statement to the State regarding the application of District policies and designated areas. In its June 27, 2005 letter, NOAA states that 11 AAC 110.015 would apply to a federal action regardless of location, notwithstanding language limiting the application of District policies to geographic areas in other sections. Yet, presumably an equivalent action by the State, e.g., an offshore oil and gas lease sale, would not be restricted by the District policy if the State sale was outside the geographic area. This characterization of the federal effects test appears to violate NOAA's criteria for uniformity in the application of CZM enforceable policies. In the Preamble to the 2000 final rules, NOAA states that uniformity is required to ensure that States are not applying policies differently, or in a discriminatory way, among various entities for the same type of project for similar purposes, e.g., holding a Federal agency to a higher standard than a local government or private citizen (Federal Register, vol. 65, No. 237, page 77128). This is a particularly significant issue for MMS and a number of other federal agencies.

The MMS concurs that the phrase "biologically and significantly productive" may not be a clear standard for users, Districts, and affected interests to determine how productivity is measured. Defining the term would be helpful, but would require the State to amend its regulations. Alternatively, MMS recommends that the State issue guidelines to clarify how productivity is to

be measured and what factors are to be considered. For example, is productivity solely a measure of an area's quality to produce and support plants and animals (i.e., caribou calving grounds) or is it also a measure of an area's importance for passage during a significant life stage (i.e., caribou migration corridors)?

If you have questions regarding our comments or desire additional information, please contact David Johnston at (907) 344-5273.

Sincerely,



John Goll
Regional Director

Enclosure

cc: Bill Jeffress, Alaska DNR, OPMP
Helen Bass, NOAA, OCRM
Winston deMonsabert, MMS, OMM
Terry Scholten, MMS, OMM

Stipulation No. 5 - Conflict Avoidance Mechanisms to Protect Subsistence Whaling and Other Subsistence Activities

Exploration and development and production operations shall be conducted in a manner that prevents unreasonable conflicts between the oil and gas industry and subsistence activities (including, but not limited to, bowhead whale subsistence hunting).

Prior to submitting an exploration plan or development and production plan (including associated oil-spill contingency plans) to the MMS for activities proposed during the bowhead whale migration period, the lessee shall consult with the directly affected subsistence communities, Barrow, Kaktovik, or Nuiqsut, the North Slope Borough (NSB), and the Alaska Eskimo Whaling Commission (AEWC) to discuss potential conflicts with the siting, timing, and methods of proposed operations and safeguards or mitigating measures which could be implemented by the operator to prevent unreasonable conflicts. Through this consultation, the lessee shall make every reasonable effort, including such mechanisms as a conflict avoidance agreement, to assure that exploration, development, and production activities are compatible with whaling and other subsistence hunting activities and will not result in unreasonable interference with subsistence harvests.

A discussion of resolutions reached during this consultation process and plans for continued consultation shall be included in the exploration plan or the development and production plan. In particular, the lessee shall show in the plan how its activities, in combination with other activities in the area, will be scheduled and located to prevent unreasonable conflicts with subsistence activities. Lessees shall also include a discussion of multiple or simultaneous operations, such as ice management and seismic activities, that can be expected to occur during operations in order to more accurately assess the potential for any cumulative affects. Communities, individuals, and other entities who were involved in the consultation shall be identified in the plan. The Regional Supervisor/Field Operations (RS/FO) shall send a copy of the exploration plan or development and production plan (including associated oil-spill contingency plans) to the directly affected communities, and the AEWC at the time they are submitted to the MMS to allow concurrent review and comment as part of the plan approval process.

In the event no agreement is reached between the parties, the lessee, the AEWC, the NSB, the National Marine Fisheries Service (NMFS), or any of the subsistence communities that could be affected directly by the proposed activity may request that the RS/FO assemble a group consisting of representatives from the subsistence communities, AEWC, NSB, NMFS, and the lessee(s) to specifically address the conflict and attempt to resolve the issues before making a final determination on the adequacy of the measures taken to prevent unreasonable conflicts with subsistence harvests. Upon request, the RS/FO will assemble this group if the RS/FO determines such a meeting is warranted and relevant before making a final determination on the adequacy of the measures taken to prevent unreasonable conflicts with subsistence harvests.

The lessee shall notify the RS/FO of all concerns expressed by subsistence hunters during operations and of steps taken to address such concerns. Lease-related use will be restricted when

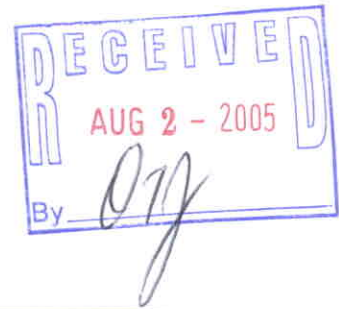
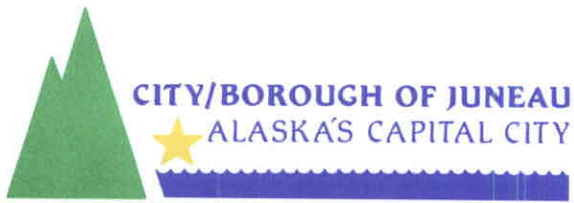
the RS/FO determines it is necessary to prevent unreasonable conflicts with local subsistence hunting activities.

In enforcing this stipulation, the RS/FO will work with other agencies and the public to assure that potential conflicts are identified and efforts are taken to avoid these conflicts.

Subsistence whaling activities occur generally during the following periods:

August to October: Kaktovik whalers use the area circumscribed from Anderson Point in Camden Bay to a point 30 kilometers north of Barter Island to Humphrey Point east of Barter Island. Nuiqsut whalers use an area extending from a line northward of the Nechelik Channel of the Colville River to Flaxman Island, seaward of the Barrier Islands.

September to October: Barrow hunters use the area circumscribed by a western boundary extending approximately 15 kilometers west of Barrow, a northern boundary 50 kilometers north of Barrow, then southeastward to a point about 50 kilometers off Cooper Island, with an eastern boundary on the east side of Dease Inlet. Occasional use may extend eastward as far as Cape Halkett.



July 26, 2005

John King, Responsible Program Manager
OCRM Coastal Program Division
National Ocean Service
SSMC4 Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Also via email: john.king@noaa.gov

Subject: Alaska Coastal Management Program EIS Scoping Comments

Dear Mr. King:

The purpose of this letter is to comment on the State of Alaska's application to the National Oceanic and Atmospheric Administration (NOAA) Office of Coastal Resource Management (OCRM) for amendment to the Alaska Coastal Management Program.

The City and Borough of Juneau opposed the passage of HB 191 in 2003 based on our belief that the legislation undermined a cornerstone of the program, that is, the due deference given to local districts (i.e. municipal governments and CRSA's) based on the enforceable policies of district plans. The basic architecture of the program gave local governments "a seat at the table" and a measure of local control regarding the conditions under which coastal development was allowed. Statutory amendments to the program, and the subsequent revised regulations and guidance have, in our opinion, significantly reduced these features of the program, and will have significant effects on coastal uses and resources.

Our effort in these scoping comments is to address the major themes of the revision and to highlight specific effects on the Juneau Coastal Management Program. We have voiced these concerns many times before to both OCRM and the State of Alaska. We have provided only a brief summary of these concerns here. A listing of our concerns contains at least the following:

Public Interest. Concentration of coastal decision making power into a single agency, the Department of Natural Resources, removes the "checks and balances" in the original ACMP that helped to balance the public interest. Specifically, elimination of the Coastal Policy Council (CPC) has reduced the opportunity for coastal districts and state agencies, other than DNR, to influence coastal decision making. The legislature created the CPC in 1978 and gave the coastal district representatives a majority of seats on the council expressly to provide for this balancing.

Regulatory Complications. DNR guidance for developing local enforceable policies has been confusing. The use of terms such as "flow from," "adequately address," and "avoid, minimize or mitigate" are difficult to understand, notwithstanding that the intent of the revisions to the program was to eliminate vague language. The revised ACMP regulations are not written in plain language, and they are confusing and difficult to understand. DNR's interpretation of the regulations has been confusing as well, especially with regard to acceptable enforceable policies. Additionally, the state is encouraging districts

John King, Responsible Program Manager
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to replace enforceable policies with the powers exercised under their Title 29 and/or Home Rule powers. This will result in an added layer of review for applicants, the potential for conflicting requirements, and the potential for delays in project approvals.

Public Process. The regulations process lacked meaningful opportunities for public involvement or the involvement of the districts. The district/state team assembled for the initial revision to the regulations never discussed the content of the regulations. The policy direction from DNR regarding acceptable enforceable policies has been a moving target. The current interpretation of acceptable enforceable policies is much different than what DNR told the legislature during testimony on HB 191 in 2003. The proposed changes reduce public participation by eliminating many projects from ACMP reviews (by separating DEC review, reducing local enforceable policies, and expanding the A and B exemption lists), removing provisions for citizen lawsuits, and providing only minimum public noticing.

Effects on the JCMP. Contrary to assertions made by the state during the hearings on HB 191, CBJ will lose the Juneau Wetlands Management Plan (JWMP), since state standards and the revised regulations (and their interpretation) does not allow local policies to use the terms "avoid, minimize, or mitigate." A wetlands plan cannot be implemented through the program without these terms. The JWMP, adopted in 1992, is based on ten years of scientific research and offers specific management protocols designed to minimize impact on high value wetlands and promote development on low value wetlands through an expedited process. This plan was developed to provide a more predictable and prescriptive permit process than the Corps of Engineers offered, which is what the state promoted in the ACMP changes.

Keeping the JWMP in our local land use plan is not a substitute for the due deference of the ACMP, since we lose a value, programmatic link to Corps of Engineers permitting. Besides the JWMP, CBJ will lose many other valuable policies on issues such as streamside setbacks, coastal development, and seafood processing. DNR's excessively narrow regulations (and subsequent interpretations) exceed the intent of HB 191, where legislators were promised that districts would retain a meaningful role based on a broad interpretation of enforceable policies. In our view, the state has failed to address the concerns of the districts, with the result that meaningful district participation in the program is seriously eroded. Likewise, the ability of districts to provide for resource protection, where this is important to local residents, is compromised, and our ability to work cooperatively with local developers to identify appropriate local solutions has been hampered.

Thank you for this opportunity to comment.

Sincerely



Dale Pernula, Director
Community Development Department
(907) 586-0757
E-mail: Dale_Pernula@ci.juneau.ak.us

Cc: Honorable Bruce Botelho, Mayor
Rod Swope, City and Borough Manager

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Judith Brady, Executive Director

Alaska Oil and Gas Association Comments to the Office of Ocean and Coastal Resource Management On Alaska Coastal Management Program Amendments Environmental Impact Statement Scoping Meetings July 27, 2005

Good Morning. My name is Judy Brady and I am the Executive Director of the Alaska Oil and Gas Association (AOGA), a private non-profit trade association. AOGA is pleased to have this opportunity to provide comments to the Office of Ocean and Coastal Resource Management on the scope of the Alaska Coastal Management Program Amendments Environmental Impact Statement. AOGA is a private, nonprofit trade association whose 18 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA supports the State of Alaska's analysis, most recently contained in its June 2, 2005 amendment submittal to OCRM, that the AMCP amendments comply with the requirements of the Coastal Zone Management Act and is implementing regulations at 15 CFR Part 923.

When the Alaska Coastal Management Act (ACMA) was passed by the legislature in 1977 (the same year the Clean Water Act was passed by Congress), the comprehensive body of federal and state environmental laws and regulations was still being developed and was not fully in place. Title 29 planning and zoning ordinances and regulations of a number of Alaska local governments were also in their infancy at that time. Today, the federal and state statutory and regulatory framework addresses many of the environmental and development concerns that the ACMP was originally intended to address. One of the catalysts for passage of HB 191 and the other ACMP amendments was the fact that the ACMP has been overtaken by other federal, state, and local regulatory authorities. The overlap between the ACMP and other regulatory authorities is the most significant fact for OCRM to consider as it conducts its analysis of the environmental impacts of the ACMP amendments.

The level of environmental protection of coastal resources has not changed as a result of the ACMP amendments. Rather, duplication, complexity and uncertainty have been removed from the ACMP. The focus has changed to ensure that matters of local concern, not otherwise addressed by the large body of federal and state laws, drive the development-specific coastal resource protection measures and requirements for development projects. The resulting permitting efficiency and clarity fully comport with the CZMA mandates and regulations to make coastal management work in unison with State and local programs. In our written comments we will include an annotated list of laws and regulations that may apply to development projects in Alaska that demonstrate the above comments on the comprehensive Alaska regulatory framework. OCRM should carefully analyze that list in considering the environmental implications of the ACMP reforms.

Today, a major resource development project located in the coastal zone may require on the order of three dozen permits and authorizations from federal, state and local government agencies. Layered on top of all of these permits are the often duplicative provisions of the ACMP, which mandates that certain of those federal and state permits (excluding now ADEC under the ACMP reforms) cannot be issued until they are found consistent with the standards of the ACMP and applicable coastal district enforceable policies. These standards and policies often triggered an unnecessary second look at issues already regulated under other federal and state laws and regulations. HB 191 and its implementing regulations address this duplication and complexity by establishing bright lines for the scope and applicability of consistency reviews.

The ACMP is not a permitting program, but over the years its administration and litigation risks have made it appear so. This concern was another reason for passage of HB 191. Prior to the passage of HB 191, the ACMP had become a cumbersome complex process that hindered timely issuance of permits. The state standards duplicated federal and state law and many district policies duplicated the requirements of both state policies and certain federal and state regulatory programs. This overlap led to confusion and compliance complexity. The permitting schedule under ACMP had become the victim of the slowest permit.

AOGA supported HB 191 because it simplified the ACMP process. Most importantly, it recognized the significant evolution of environmental protection provided by federal and state regulatory programs since the inception of the ACMP. In particular, it made ADEC permits and authorizations automatically consistent upon issuance. Those permits no longer hold up the ACMP review or dictate its schedule.

In addition to HB 191 and the new ACMP regulations, which are the subject of OCRM's EIS, the State also implemented significant reforms with respect to ACMP management and the coordination of project permitting through the creation of the Office of Project Management and Permitting in the Department of Natural Resources. These permit streamlining reforms fully conform to the coastal program management requirements specified in 15 CFR Part 923 Subpart E such as a clearly defined organizational structure and a single agency designated to manage the program.

The other significant reform provided by HB 191 was to require districts to revise their coastal program policies so that they did not duplicate federal or state laws and regulations unless the policies relate to a matter of local concern. This appropriately focused the scope of district enforceable policies. The definition of a "matter of local concern" is a specific coastal use or resource within a defined portion of a district's coastal zone, that is (1) demonstrated as sensitive to development, (2) not adequately addressed by state or federal law, and (3) of unique concern to the coastal district as demonstrated by local usage or scientific evidence. This important change allows coastal districts to focus on local matters in a regulatory arena that is already comprehensive and complex. AOGA understands that the State has made a major effort to assist districts in crafting policies that meet the requirements of HB 191 and the new ACMP regulations and the districts have secured through legislation an extension to revise their plans.

AOGA's support of the permit streamlining and permit management benefits of the ACMP amendments does not mean that our members' commitment to environmentally responsible development and full consultation with those affected by our activities has changed. This regulatory reform focus appears to have been lost in the debate over the ACMP amendments. The role of coastal districts in the permitting process is unchanged - permits cannot be issued without an affirmative consistency finding. Further with the exception of ADEC's regulatory authorities, coastal district management programs may still designate areas of specific uses or resource values and develop enforceable policies to address those uses and resources.

We understand that the purpose of this comment opportunity is to assist OCRM in its determination of what needs to be addressed in the EIS. For the reasons mentioned in my testimony, we believe that the only change to the status quo that will result from the ACMP amendments will be a better functioning permit system. If this improved process results in any "on-the-ground" impacts, they will have everything to do with a more efficient permit system and nothing to do with the alteration of any environmental standards.

Thank you for this opportunity to provide these scoping comments on the ACMP amendments EIS.

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Judith Brady, Executive Director

Alaska Oil and Gas Association

Comments to the Office of Ocean and Coastal Resource

Management

On

Alaska Coastal Management Program Amendments

Environmental Impact Statement Scoping Meetings

July 27, 2005

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The level of environmental protection of coastal resources has not changed as a result of the ACMP amendments. Rather, duplication, complexity and uncertainty have been removed from the ACMP. The focus has changed to ensure that matters of local concern, not otherwise addressed by the large body of federal and state laws, drive the development-specific coastal resource protection measures and requirements for development projects. The resulting permitting efficiency and clarity fully comport with the CZMA mandates and regulations to make coastal management work in unison with State and local programs. In our written comments we will include an annotated list of laws and regulations that may apply to development projects in Alaska that demonstrate the above comments on the comprehensive Alaska regulatory framework. OCRM should carefully analyze that list in considering the environmental implications of the ACMP reforms.

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The ACMP is not a permitting program, but over the years its administration and litigation risks have made it appear so. This concern was another reason for passage of HB 191. Prior to the passage of HB 191, the ACMP had become a cumbersome complex process that hindered timely issuance of permits. The state standards duplicated federal and state law and many district policies duplicated the requirements of both state policies and certain federal and state regulatory programs. This overlap led to confusion and compliance complexity. The permitting schedule under ACMP had become the victim of the slowest permit.

AOGA supported HB 191 because it simplified the ACMP process. Most importantly, it recognized the significant evolution of environmental protection provided by federal and state regulatory programs since the inception of the ACMP. In particular, it made ADEC permits and authorizations automatically consistent upon issuance. Those permits no longer hold up the ACMP review or dictate its schedule.

In addition to HB 191 and the new ACMP regulations, which are the subject of OCRM's EIS, the State also implemented significant reforms with respect to ACMP management and the coordination of project permitting through the creation of the Office of Project Management and Permitting in the Department of Natural Resources. These permit streamlining reforms fully conform to the coastal program management requirements specified in 15 CFR Part 923 Subpart E such as a clearly defined organizational structure and a single agency designated to manage the program.

The other significant reform provided by HB 191 was to require districts to revise their coastal program policies so that they did not duplicate federal or state laws and regulations unless the policies relate to a matter of local concern. This appropriately focused the scope of district enforceable policies. The definition of a "matter of local concern" is a specific coastal use or resource within a defined portion of a district's coastal zone, that is (1) demonstrated as sensitive to development, (2) not adequately addressed by state or federal law, and (3) of unique concern to the coastal district as demonstrated by local usage or scientific evidence. This important change allows coastal districts to focus on local matters in a regulatory arena that is already comprehensive and complex. AOGA understands that the State has made a major effort to assist districts in crafting policies that meet the requirements of HB 191 and the new ACMP regulations and the districts have secured through legislation an extension to revise their plans.

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We understand that the purpose of this comment opportunity is to assist OCRM in its determination of what needs to be addressed in the EIS. For the reasons mentioned in my testimony, we believe that the only change to the status quo that will result from the ACMP amendments will be a better functioning permit system. If this improved process results in any "on-the-ground" impacts, they will have everything to do with a more efficient permit system and nothing to do with the alteration of any environmental standards.

Thank you for this opportunity to provide these scoping comments on the ACMP amendments EIS.

ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

July 26, 2005

Mr. John R. King, Responsible Program Officer
Coastal programs Division
Office of Coastal Resource Management
National Ocean Service
SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Subject: Environmental Impact Statement (EIS) for the Proposed Approval of Amendments to the Alaska Coastal Management Program (ACMP)

Dear Mr. King:

The following comments are provided regarding the subject EIS and are intended to be formal comments on the amended program. It is important to receive these comments in the context of what they represent. The Aleutians West Coastal Resource Service Area (AWCRSA) Board speaks for the coastal program for the entire western Aleutian area from Unalaska Island west to Attu Island, an area that is 20 to 60 miles in width and roughly 1000 miles long. It is bounded by the Pacific Ocean to the south and the Bering Sea to the north and has a wealth of natural resources including some of the richest fishing grounds in the state and the nation. Like the geography, the communities of the region are also diverse. Unalaska, the number one seafood processing port in the nation for many years, has a population of over 4000 people, and Nikolski, a tribal government, has 39. Both of these communities along with Atka contribute members to the AWCRSA Board. Please consider the following comments.

Under the ACMP, communities address local coastal issues through coastal district management plans. In 2003, the Alaska legislature passed HB 191 that substantially revised the state's coastal management program. We understand the program changes were to accomplish the following:

- provide clear and concise guidance
- provide greater uniformity in coastal management regulations throughout the state
- relate to matters of local concern, and
- not duplicate state and federal legislation

All local district plans are in the process of revision to meet the requirements of HB 191 and since July of last year our district has been working with the state to amend our program and craft acceptable policies. However, while we have been working diligently at our program revision, we have found the process

complicated by regulations that are not clear and concise but rather inadequate, conflicting, and unclear. The program amendment and adopted regulations have eroded the previous ACMP framework into a spider web of complex and conflicting requirements, prohibitions, and definitions that have left local districts hanging by a thread. We have several specific concerns regarding the changes to the ACMP.

The amended program involves a major overhaul of the statewide standards. Several of the standards are eliminated, removing them from statewide purview, and a number of other standards are substantially weakened. Some specific standards, such as recreation and subsistence, only have substance through the local coastal district programs as there are no implementing authorities within the state. It is necessary for local coastal district programs to designate these areas to be able to subsequently develop policies that would apply within the designated boundaries. Since the revision and subsequent to the state review of our draft amended plan, we have been unable to craft an enforceable subsistence policy that is acceptable to the state. Additionally, the AWCRSA has requested a legal interpretation from the state on whether we even have the regulatory authority to designate areas without borough status. The state has agreed that the question deserves an opinion from the Attorney General. The results of this determination could have significant consequences for designations in vast areas of the coast located in the unorganized areas of the state. Prior to the revision of the coastal program local policies had "blanket" applicability throughout the district and would be considered during federal activities.

The coastal program should allow districts to address upland areas important to wildlife and other coastal resources as it has in the past. The habitat standard defers greatly to water quality issues, which are DEC territory, but does not provide a mechanism to address fishery resources that are important. While water quality is certainly one factor, it is not the only factor that should be considered. Moving historic, prehistoric, and archaeological resources to a subject use removes these areas from state purview and could prove detrimental to these irreplaceable resources. Also, the mining and mineral processing standard is gone and not replaced with a subject use or any other planning mechanism. Mining activities can have significant effects on coastal uses and resources and this activity should continue to be addressed by the ACMP.

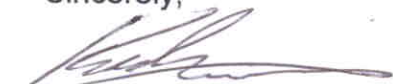
Matters regulated by the Alaska Department of Environmental Conservation (DEC) have been removed from the previous ACMP review process and there now exists a prohibition for districts to establish policies for air and water quality issues. The AWCRSA is opposed to the fractioning out of DEC regulated matters and asserts that such an action will make it impossible to consider the full effects of a project and can potentially result in increased impacts to coastal resources. We have found the single-agency ACMP reviews coordinated by DEC to be problematic and essentially symbolic since passage of HB 191.

Through the amended program the state has created confusion and an nearly impossible threshold for a local coastal district to raise a matter of local concern and write local policies. The AWCRSA began our amendment process with 41 enforceable policies. Last July sixteen policies were recommended for deletion with the remainder requiring documentation, rewording, or incorporation of acceptable elements into other retained policies. With this goal in mind, the AWCRSA completed the policy revisions and then received regulatory interpretations where it became apparent that additional revisions would be required. The additional revisions were completed and the draft document submitted for review. As a result of comments received from the state the draft document was further cleansed of five additional unacceptable policies. The AWCRSA amended coastal management plan now contains a total of fourteen enforceable policies. The local component is one of the primary mechanisms for implementing a state coastal program. State agencies have historically relied on local expertise in making consistency determinations and applicants depend on knowledgeable participants in the review process. The elimination of our ability to construct enforceable polices will preclude us from meaningful participation in the consistency review process. This can only result in a shortchanging of the applicant and the local citizens represented by our coastal district.

We feel it is paramount to continue to retain a coastal management program that complies with federal law and meets the needs of the Alaskans represented by our local coastal district. The residents of the AWCRSA desire a working partnership with state and federal agencies and meaningful participation in the consistency review process. While we do not agree that the current amended program provides clear and concise guidance, provides greater uniformity in coastal management regulations throughout the state, or adequately relates to matters of local concern, we do desire a continued role in the coastal process and that can only come through federal approval of an amended program.

We appreciate the opportunity to comment and trust that the EIS process will result in a successful conclusion that will ultimately be satisfactory to all parties.

Sincerely,



Karol Kolehmainen
Program Director

Cc: AWCRSA Board of Directors



Lake and Peninsula Borough

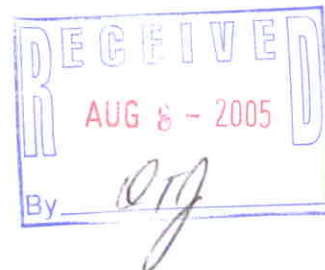
*P.O. Box 495
King Salmon, Alaska 99613*

*Telephone: (907) 246-3421
Fax: (907) 246-6602*



August 1, 2005

John King, Responsible Program Manager
Coastal Programs Division
Office of Coastal Resource Management (OCRM)
National Ocean Service
SSMC4, Room 11305
1305 East-West Highway
Silver Springs, MD 20910-3281



Subject: Comments on Intent to Prepare an Environmental Impact Statement (EIS) for approval of Amendments to the Alaska Coastal Management Program.

Dear Mr. King:

The purpose of this letter is to comment on the intent to prepare an EIS for approval of Amendments to the Alaska Coastal Management Program.

The Lake and Peninsula Borough is requesting this Impact Statement evaluate how these sweeping changes to the State of Alaska's Coastal Management Program will have impact on Subsistence, Local Control, Habitats, Mining, Air Land and Water Quality Issues, Energy Facilities, implementation of Title 29 Planning Powers and the overall cumulative effects of these changes.

Each community within our Borough is located in the Alaska Coastal zone on salt water shoreline or on the shoreline of a fresh water lake. Enclosed is an informational video of the Lake and Peninsula Borough that will emphasize the importance of the habitat to our economy and subsistence life style. Also enclosed is the Visitor Guide for the Bristol Bay and Alaska Peninsula for your review and consideration during this EIS. For statistical information on our Borough see attachment 1 to this document which is a detailed six page description of the Lake and Peninsula Borough. Also attached is a map of our Borough that will help demonstrate how this EIS will affect our Borough in the future.

In 2003 the Alaska Legislature passed House Bill 191 that substantially revised the state's coastal management program. As a result of that bill and the recent 2005 Senate Bill 102 the program has changed dramatically. As a result of HB 191 the State of Alaska is in the process of amending the State Coastal Management Program which

directly affects the Lake and Peninsula Borough. This program change required the writing of new regulations for coastal districts and the state to follow in implementing the program. We understand the program changes were to accomplish the following:

- provide clear and concise guidance
- provide greater uniformity in coastal management regulations throughout the state
- relate to matters of local concern, and
- not duplicate state and federal legislation

The Borough is in the process of revising its plan to comply with the required revisions.

The citizens of the Borough live and subsist on our coastline and find that resource very important to their livelihood and survival. They firmly agree this is a matter of local concern. We are strongly opposed to the sweeping and drastic changes the State of Alaska is making to the current program as it is not very clear, does not allow local input, the guidance is very confusing and difficult to comprehend and follow. We do not feel the new program provides greater uniformity in coastal regulations.

The changes directly affect the Lake and Peninsula Borough as the new regulations do not provide the adequate protection contained in the previous program for our fresh water lakes. Specifically, we are concerned that the new program will not give us the control we have over protecting the waters and shoreline of Lake Iliamna. The Borough Coastal Management Plan currently in effect, had 57 policies addressing coastal management. The Borough submitted a draft plan to the State for review with only 27 policies in our interpretation of the new regulations and statutes. The State reviewed those draft policies and stated only 10 of those policies could be approved under their interpretation of the new regulations. We do not have confidence this will provide the protection needed for our pristine coastline to be maintained at its current state.

We are in the process of re-writing policies that will provide protection for Lake Iliamna as a special designated area. However, this is subject to approval by the State when our final plan is submitted for review.

Lake Iliamna is a very special body of water. It is an inland freshwater sea and is the largest fresh water lake in Alaska. It is home to the largest natural spawning grounds for red salmon in the world. It is the only lake in the United States that has fresh water seals inhabiting the lake. This lake is one of two in the world with this distinction. The other is in Russia.

Changing the current enforcement powers the Borough has on Lake Iliamna to the new Standards the State is requiring us to follow should require its own separate Environmental Impact Statement. For example, if projects to install small boat harbors in the communities of Egegik (located on Salt water) and a small boat harbor in the community of Igiugig (located on Fresh water) the consistency review would not be the same. Even if the projects were designed identical with the same specifications. Under the existing program they would both require a consistency review. Under the states new

program the one in Igiugig would not. We strongly request an evaluation of how two identical projects would be reviewed for consistency under the new regulations versus the old regulations and evaluate what local input would be taken or considered, especially for the project in Igiugig on Lake Iliamna a fresh water lake.

The amended program has completely changed the statewide standards to the point that local districts have no local input. Several of the standards were completely eliminated from the program and many other standards were weakened. We strongly encourage this EIS to evaluate the impacts of changes to each standard.

- **Changing Laws:** For each change to the ACMP that reduces protections for coastal resources, the EIS should include a discussion of how other laws can or cannot make up for this loss.
- **Subsistence:** Several changes have weakened this standard. Provisions to assure access to subsistence resources have been removed. District policies can only be established for areas designated for subsistence use. Policies may only address the use and not the resource itself. It remains to be seen what evidence DNR will require for establishment of a subsistence use area (subsistence use changes from year-to-year due to changes in migration patterns). Comments on draft plans by DNR state that the "avoid or minimize" clause in the standard adequately addresses most issues and that districts could only "allow or disallow" a use. The standard does not include a mitigation clause even though many development projects will have adverse impacts where mitigation would be appropriate.
- **Habitats:** The proposed standard removes the requirement to maintain and enhance habitats unless a project meets the three-part test. DNR is interpreting the management measures in subpart (b) of the standard as the only matters that can be addressed for each habitat listed. Most references to living resources have been removed from the management measures in subpart (b). DNR is saying that the "avoid, minimize or mitigate" clause in the standard adequately addresses all impacts to habitat (but it says that districts can establish policies that "allow or disallow" uses). Upland habitats have been removed as a special category in the standard. Districts may only establish policies for areas they designate as important habitat (it will be difficult to establish important habitats because of the new requirements). State law is inadequate to protect habitats (the Office of Habitat Management and Permitting has only two narrow laws and no regulations).
- **Mining:** The mining standard has been replaced by a sand and gravel extraction standard that only applies to areas with saltwater or barrier islands. Placer mining and hard rock mining are no longer a "subject use" of the ACMP.
- **Energy Facilities:** DNR says that the only way a district may establish policies for energy development is to designate an area as suitable for energy development. Since districts do not have access to information available to

industries, they may not know where oil and gas resources exist. Many districts would not support offshore development, but under DNR's interpretation of the law, they could not establish policies for offshore oil development unless they designated the area as suitable for development.

Consistency Reviews: We strongly urge this EIS to also evaluate how consistency reviews are now accomplished to determine the possible effects of the changes on our coastlines. The evaluation should include an analysis of the effects of:

- Limiting reviews to the coastal zone (formerly, any project with potential impacts to coastal uses or resources was reviewed),
- Changes were made in the June 2005 changes to the regulations to make it appear that DNR will review federal activities outside the coastal zone (AS 46.40.096(k) – (l) removes the ability to conduct a consistency review for any activities inland of the coastal boundary),
- Legislation has eliminated coal bed methane projects from consistency reviews even though these resources require more wells and more water usage than typical oil and gas developments,
- The mandate in HB 191 to add projects to the A and B lists (after the ABC list is updated, will allow few opportunities for consistency reviews), and
- The new 90-day limit for consistency reviews will not be adequate to review the effects of some projects, especially if the ACMP consistency review occurs before completion of an environmental assessment or an EIS,

Reduced Local Control: We also strongly request the EIS evaluate local control. New measures will reduce the ability of coastal districts to manage coastal resources and uses, and it can be expected that there will be additional impacts.

- Local participation in the ACMP gives an incentive for local governments and CRSAs to carefully monitor projects and their impacts. With a diminished role for districts, impacts will likely increase.
- New requirements for "prescriptive" policies will eliminate the current process where districts negotiate with an applicant to find project-specific solutions to issues that are tailored to the specific proposal and area of the development.
- The elimination of Coastal Policy Council (CPC) removes districts from the coastal decision-making process (districts had the majority of votes on the CPC).
- The June 2 description of the ACMP states that districts will no longer have representation on the ACMP Working Group.
- Some districts have already dropped out of the program and are not revising their plans.

Air and Water Quality Issues: The EIS should include a thorough analysis of the effects of removing matters regulated by the DEC from the consistency review process.

- DNR is interpreting the statutory change to mean that districts may not have any policies for air or water quality matters, even for matters not regulated by DEC.

- Air and water quality issues are closely connected to other coastal resources and uses, and removal of them from consistency reviews will remove the ability to address some of the most important impacts of a project from the consistency review.
- Activities regulated by DEC will no longer be reviewed for consistency with other statewide standards for district enforceable policies.
- DNR has not been able to adequately describe the scope of review for projects that require both a DEC permit and federal agency permits (e.g., a DEC 401 certification and either an EPA NPDES permit or a Army Corps of Engineers 404 permit).
- There appears to be no public process for districts to participate in consistence comments for air and water quality aspects of Outer Continental Shelf (OCS) projects because DEC has no authority for federal OCS waters.

Potential Outer Continental Shelf (OCS) Projects: Oil and gas projects provided the impetus for the state to establish the original ACMP, but the new changes appear to reduce the ability of the state or coastal districts to influence these projects. Environmental impacts will likely increase.

- DNR maintains that districts may not establish any policies for air or water quality, but DEC has no authority to regulate OCS matters, including air and water quality.
- There is no process for districts to participate in DEC's consistency finding for OCS projects under 11 AAC 110.010(e).
- Reduced ability for district enforceable policies on other matters will weaken its ability to influence OCS activities.
- The federal OCS lands act does not include sufficient measures for local or state involvement in OCS activities.

Public Participation: The proposed changes reduce public participation by:

- Eliminating many projects from ACMP reviews (new additions to the A or B lists and coal bed methane projects),
- Removing provisions for citizen lawsuits for ACMP consistency determinations (without an incentive to avoid lawsuits, the state may cut corners), and
- A directive by the chief-of-staff to state agencies to only do the minimum public noticing that is required by law (many DNR permits do not require a public notice).

Title 29 Powers: We strongly request this evaluation study the impacts of how the state has repeatedly stated that our Borough can implement Title 29 Planning Powers to replace the areas coastal management will no longer have influence over. Specifically, areas that will be removed from our existing plan. In consultation with our attorney he advises we cannot fill the voids by the utilization of Title 29 Planning Powers. We are a very young Borough and our coastal management plan interrelates with many other Borough ordinances that will have to be rewritten at our own expense and time. The state

has not provided any additional funding for our costs mandated by the new legislation. We request this additional expense be included as a portion of the evaluation of Title 29 Powers.

Cumulative Impacts: The cumulative impacts resulting from the changes should be evaluated in the EIS. While some of the changes may not be significant individually, they will have substantial impacts when combined with the other changes. Also, the cumulative impacts of projects that will no longer undergo a consistency review should be evaluated.

Definitions: The changes to the definitions should be analyzed to determine what environmental effects might occur under the proposed changes. For example, the definition of marine waters no longer includes a reference to living resources.

In summary please take the time to view the video and visitors guide. The Lake and Peninsula Borough would like to emphasize the importance of close evaluation of how these sweeping changes to the State of Alaska's Coastal Management Program will effect Subsistence, Local Control, Habitats, Mining, Air Land and Water Quality Issues, Energy Facilities, implementation of Title 29 Planning Powers and the overall cumulative impacts of these changes.

Thank you for the opportunity to comment on this very important issue. If you have questions regarding our scoping comments please contact Marv Smith at 907-246-3421.

Sincerely,



Glen Alsworth, Sr.
Mayor

Attachment 1 - Borough Description
Attachment 2 - Borough Map

CC: L&P Borough Assembly
L&P Borough Planning Commission
All Coastal Districts
Helen Bass NOAA/OCRM
Bill Millhouser NOAA/OCRM
ADNR/OPMP
ADF&G